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Address Delivered Before the Bar Association of Alameda County Entitled "The Chessman Case"

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ADDRESS DELIVERED BY JESSE W. CARTER, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF CALIFORNIA, BEFORE THE
BAR ASSOCIATION OF ALAMEDA COUNTY
AT THE ATHENS CLUB IN OAKLAND, CALIFORNIA
ON THE 11TH OF FEBRUARY, 1958
ENTITLED "THE CHESSMAN CASE"

* * *

I have been asked to speak to you today on the Chessman case. This case has received much publicity during the last nine years. Most of this publicity arose out of the fact that during his incarceration in Death Row at San Quentin Chessman has become the author of two best-selling books and he has also written two other books, which I understand, are now in the process of being published and sold to the public. Because of the notoriety created by the publication and sale of these books and the numerous court proceedings he has instituted to set aside the judgments of conviction against him, the Chessman case has probably received more publicity

than any other case during the last decade except cases involving our national security such as the Alger Hiss and Rosenberg cases.

While everyone who reads the newspapers has heard about the Chessman case, there are very few people who have any knowledge as to what the case involves or the cause of the delay of over nine years in disposing of the legal problems presented for solution

I offer no apology for speaking on this subject because I am frequently asked by thoughtful, intelligent people how it is possible, under our system for the administration of justice, that a person convicted of seventeen felonies, two of which carry the death penalty, can escape the infliction of that penalty for over nine years, and the case is now back where it was the day the judgment was pronounced on June 25th, 1948. I have always endeavored to answer this question and will endeavor to do so today. I want it clearly understood, however, that it is not my

purpose to discuss the merits of the case or express any opinion in regard to the guilt or innocence of Chessman. Neither will I venture an opinion as to what may be the outcome of the case. What I have to say will relate solely to what has happened in this case in the past as shown by the record.

The record in the Chessman case discloses that on May 21st, 1948, Chessman was found guilty of seventeen felonies by a jury in the Superior Court of Los Angeles County, and on June 25th, 1948, sentence of death was pronounced against him. While he was not charged with or convicted of murder, the two counts carrying the death penalty arose out of an alleged kidnapping, robbery and rape episode which is made punishable by death under a California statute.

Under California law, every person convicted of a crime involving the death penalty has an automatic appeal to the Supreme Court of California, and the members of the

Supreme Court are required to read the entire record and determine whether the defendant was given a fair trial before an impartial judge and jury, or an impartial judge, where a jury trial is waived, and whether any errors were committed in the trial court prejudicial to defendant which resulted in a miscarriage of justice. Since the state law makes it the mandatory duty of the Supreme Court to review all of the proceedings in the trial court in such cases, it is equally mandatory that a full and correct record of such proceedings be prepared and presented to the Supreme Court.

The record in the Chessman case discloses that a man by the name of Perry was the official court reporter who took shorthand notes of the proceedings at his trial which consumed approximately eighteen trial days. He was an old man and was suffering from a fatal illness. He died after only 648 out of 1,810 pages of the trial transcript had been

dictated into a recording machine Thereafter the deputy
district attorney who prosecuted Chessman arranged with one

Stanley Fraser who was an uncle of the wife of said deputy district attorney to transcribe the remaining notes of the deceased reporter. Fraser was not an official court reporter of Los Angeles County.

POSTER ASSOCIATION

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On September 16th, 1948, when the appointment of

Fraser was under consideration, the Chairman of the Executive Committee of the Los Angeles Superior Court Reporters' Association wrote the Board of Supervisors respecting the

matter, as follows: *quote* "We believe the purported charge against

the county is not only an exorbitant one per se, but will

reflect further adverse publicity upon our group because we

have serious doubts that any reporter will be able to furnish

a usable transcript of said shorthand notes. Other reporters

of our number have examined and studied Mr. Perry's notes and

have reached the conclusion that many portions of the same

will be found completely indecipherable because, toward the

latter part of each court session, Mr. Perry's notes show his

illness. We feel that this should be brought to your attention

In November, 1948, Chessman unsuccessfully sought to have the Supreme Court of California halt the preparation of transcript on the ground that Perry's notes could not be transcribed with reasonable accuracy. Fraser then went forward with the work of attempting to transcribe Perry's notes, and was occupied with it over the next several months. A rough draft of the transcript was submitted to the trial judge in February, 1949, but was not made available to Chessman, although he had requested that it be furnished him. After this draft had been gone over by the deputy district attorney, it was filed with the judge in final form on April 11th, 1949, and a copy was then sent to Chessman who was in Death Row at San Quentin Prison. Thereafter Chessman sent to trial judge a list of some 200 corrections to the transcript and at the same time moved that he be given a hearing in open court to enable him to determine whether Fraser had the ability to read Perry's notes and to point out to the court the many inaccuracies and omissions in the

transcript, asserting that he could prove these inaccuracies and omissions and desired to have the court consider the proof he had to offer in opposition to the transcript prepared by Fraser.

Chessman's motion was denied by the trial court and the court proceeded with the settlement of the transcript in the absence of Chessman or his counsel. At a hearing held on June 1st, 2nd and 3rd, 1949, in which Chessman was not represented in person or by an attorney the trial judge, after hearing Fraser's testimony as to the accuracy of his transcription and allowing some eighty of the corrections listed by Chessman, settled the record upon which Chessman's automatic appeal was to be heard. Thereafter Chessman made a motion in the Supreme Court of California attacking the adequacy of these settlement proceedings, claiming, among other things, that he had not been permitted to appear at such proceedings. While that motion was pending on August 18th, 1949, a further hearing was held before the

trial judge with reference to the settlement of the record at which two witnesses were examined. Again, Chessman was not represented at this hearing either in person or by counsel. The sufficiency of the record, as thus settled, was upheld by the Supreme Court of California by a five-to-two vote. Mr Justice Edmonds and I dissented from the holding of the majority of the court. Thereafter the Supreme Court of California considered the case on its merits and relied upon the transcript prepared by Fraser for its review of the proceedings in the trial court. Again by a five-to-two vote of the court the judgments of conviction against Chessman were affirmed. Again, Mr Justice Edmonds and I dissented from the holding of the majority of the court.

On July 16th, 1954, Chessman presented to the Supreme Court of California a petition for a writ of habeas corpus charging fraud in the preparation of the record of his trial. In this petition he alleged that he had just learned that Fraser was related by marriage to the deputy district

attorney who had prosecuted him and that Fraser had collaborated with said deputy district attorney and some of the witnesses for the prosecution in the transcription of the record. None of these facts were known to the Supreme Court of California when it approved the record or when it relied upon the record in affirming the judgments of conviction against Chessman. The Supreme Court of California denied Chessman's petition for habeas corpus, and he then petitioned the Supreme Court of the United States for review, but that court denied his petition without prejudice to him to apply for a writ of habeas corpus to a federal district court. He applied for such a writ to the United States District Court in San Francisco, charging the same fraudulent conduct in the preparation of the record which he had first charged in his petition for habeas corpus to the Supreme Court of California on July 16th, 1954. His petition to the United States District Court was summarily denied by Judge Louis Goodmar and he appealed to the United States Court of Appeals which

affirmed Judge Goodman. He then appealed to the Supreme Court of the United States which reversed the Court of Appeals and Judge Goodman and directed that Chessman be given a hearing on his charge of fraud in the preparation of the transcript. He was then given a hearing before Judge Goodman who found against Chessman on all issues. He again appealed to the United States Court of Appeals which affirmed Judge Goodman with Chief Judge Denman dissenting. He then appealed to the United States Supreme Court, and that court on June 10th, 1957, reversed both the United States Court of Appeals and Judge Goodman and directed that Chessman be permitted to attack the accuracy of the transcript in a proceeding in the Superior Court of Los Angeles County in which he could participate either in person or by counsel.

Supreme Court of the United States held squarely, and I quote, "We accept fully Judge Goodman's finding that there was no fraud. Even so, the fact remains that the petitioner never had his day in court upon the controversial issues

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of fact and law involved in the settlement of the record upon which his conviction was affirmed. . . . Under the circumstances which have been summarized, we must hold that the ex parte settlement of this state court record violated petitioner's constitutional right to procedural due process. We think the petitioner was entitled to be represented throughout those proceedings either in person or by counsel."

The effect of this decision of the Supreme Court of the United States is to render null and void, not only Judge Goodman's decision, but the order of the Superior Court of Los Angeles County approving the trial record and all of the decisions of the Supreme Court of California overruling Chessman's objection to the transcript and affirming the judgment of conviction against him.

So, after nine years the case is now back where it was on June 25th, 1948, the day that sentence of death was pronounced against Chessman by the Superior Court of Los Angeles County.

We now come to the crucial question -- Why all delay? Looking at the case in retrospect, the answer is simple. Chessman should either have been granted a new trial back in 1948 after reporter Perry died or he should have been given an opportunity at a hearing in open court to show that the transcript prepared by Fraser was not a full or correct record of the proceedings at his trial. While this conclusion has always seemed abundantly clear to me, the trial court ruled otherwise, and thus committed an obvious error which had the effect of denying Chessman due process of law. The majority of the Supreme Court of California, on three different occasions, had an opportunity to correct this error but failed to do so.

It should be of interest to the people of California to know that it is the law of this state that in civil cases the death of the reporter before his transcription and certification of the record, gives the trial court the discretionary power to set aside the judgment and order a

trial. But there is no such provision in criminal cases even though the death penalty is involved. In granting a certificate of probable cause for appeal to the Court of Appeals in the present proceeding, Chief Judge Denman noted: "How important the California law regards this transcription [of the trial proceedings] and certification [as to its correctness] by the reporter is apparent from the fact that in civil cases the death of the reporter before his transcription and certification, gives the trial court the discretionary power to set aside the judgment and order a new trial. California Code of Civil Procedure, § 953(e). By some quirk in California legislation this does not apply to criminal cases. However, it is obvious that if the reporter's transcript is so important as to give the court such power in a civil case, a fortiori it must have such importance in a criminal case in which, on the evidence to be transcribed, the accused is sentenced to death. Likewise its importance is emphasized by the California law making the appeal automatic from death sentences

After the case got into the federal court, it took two hearings in the trial court and two appeals to the federal court of appeals, and finally two appeals to the Supreme Court of the United States before a final clean-cut decision was reached on the due process of law issue. The phrase "due process of law" was borrowed by our forefathers from the Magna Charta. It had a meaning of great significance to them. They engrafted it into our fundamental law. By a provision contained in the Fifth Amendment to the Constitution of the United States the government of the United States is prohibited from depriving any person of "life, liberty or property without due process of law," and by the Fourteenth Amendment to the Constitution of the United States the same prohibition is extended to action by a state.

The United States Supreme Court
It has been said that the term "due process of law" has "broad contours," and may be invoked to protect those fundamental civil liberties guaranteed to every person by the Bill of Rights. Some of these rights are: *I quote* the right to be

informed as to the nature of any criminal charge; security against double jeopardy and self-incrimination; the right to a speedy and public trial by an impartial jury in the district where the crime was committed; the right to be confronted with the witnesses against the accused; and the right to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense at all stages of the proceedings against him; the right to be admitted to bail and the right not to be subjected to excessive fines or cruel and unusual punishment. These rights form the basis of the American system for the administration of justice.

Here Chessman was obviously denied due process of law in not being permitted to be present either in person or by counsel when proceedings were had in the trial court for the settlement of the record of his trial. Obviously, this was a matter of great importance to him. The seriousness of an error in a trial record in a case such as this should be

obvious to everyone -- judges, lawyers and laymen alike. A mistake in the transcription of one little word may mean the difference between guilt or innocence -- imprisonment or freedom -- life or death. The little word -- "not." "I did not see" -- "I did not hear" -- "I do not know" "I was not there." Omit the word "not" from any statement and it means the opposite I do not know whether Stanley Fraser could decipher Perry's notes or not. But I do know that in my twenty-six years of law practice I never found a reporter who would undertake to decipher the notes of another reporter. I was told many times that it could not be done especially where the notes were made by reporter who had done reporting for many years and had developed his own system which was known only to himself.

Be that as it may, the case is now back in the trial court where the matter will be heard in the form of an adversary court proceeding witnesses may be examined and cross-examined in the presence of Chessman and his counsel. The matter will be argued and finally decided by the court

and it is hoped that these proceedings will comply with the due process of law requirement of both our state and federal Constitutions.

It may be true that there are many people who criticize our system for the administration of justice because of the delay which has occurred in this case. I agree that there has been unnecessary delay. But courts are administered by human beings and errors are bound to occur. Our judicial system consists of a trial judge, an appellate court of three judges and a Supreme Court of seven judges in this state, and a Supreme Court of the United States of nine judges. The higher courts are established to correct the errors committed by the lower courts. The people are not willing to have their lives, liberties or fortunes entrusted to the decision of one judge, however wise or just he may be, and I think the result achieved by our appellate court system demonstrates the wisdom of those who framed our Constitutions.

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The result in this case is not only gratifying to me personally, because it is in accord with the views expressed in my dissenting opinions when the case was before the Supreme Court of California on at least three occasions, but it renews my confidence in our system for the administration of justice and in the strength of character and outstanding ability of the men who are now serving as justices of the Supreme Court of the United States. In my opinion it is a great court, presided over by great judges. The decision of the Supreme Court of the United States in the Chessman case will stand as one of the judicial masterpieces in American jurisprudence. It was written by a great jurist, the Honorable John Marshall Harlan, whose grandfather by the same name graced the bench of that great court for nearly 35 years and is recognized as one of our greatest jurists.

After reviewing the factual and legal background of the Chessman case, Mr. Justice Harlan, speaking for the court,

made the following dynamic statement: "Without blinking the

fact that the history of this case presents a sorry chapter in the annals of delays in the administration of criminal justice, we cannot allow that circumstance to deter us from withholding relief so clearly called for. On many occasions this Court has found it necessary to say that the requirements of the Due Process Clause of the Fourteenth Amendment must be respected, no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be after guilt has been established in accordance with the procedure demanded by the Constitution. Evidently it also needs to be repeated that the overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist. This Court may not disregard the Constitution because an appeal in this case, as in others, has been made on the eve of execution. We must be deaf to all suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, because

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courts, including this Court, were not earlier able to enforce what the Constitution demands. The proponent before the Court is not the petitioner but the Constitution of the United States."

Chessman only a symbol - next to it could be you - you or me
The judicial philosophy inherent in the foregoing

declaration should appeal to everyone who believes in the ideal of "equal justice under law." In essence it means, that Chessman is only a symbol -- that the constitutional guarantee of due process of law applies to all alike, whether rich or poor, high or low, guilty or innocent. While Chessman, a much publicized malefactor, may be the recipient of the benefit of this salutary pronouncement, it applies equally to you and to me and to everyone who may seek its protection.

In conclusion I desire to leave with you this thought. The Supreme Court of the United States is the court of last resort on all matters of law arising under the Constitution of the United States and its amendments. That

court has squarely held that Chessman was denied due process of law by the California courts. Those of you who believe in a government of law, as I do, must feel as I do, that it is a horrifying thought that even a guilty person could be executed on a conviction obtained in violation of the due process clauses of the Constitution of the United States. But it is even more horrifying to realize that if this happen to a guilty person it may also happen to an innocent person, because you cannot protect the innocent without, at the same time, protecting the guilty. Let one man be deprived of his property, or his liberty or his life without due process of law, and the property, liberty and lives of all of us are in danger. These are not mere words, they are the armor which shields our liberties from destruction.